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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,103	10/26/2000	Joachim Zimmer	1356	1589
7590 05/17/2004 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			EXAMINER COLE, LAURA C	
			ART UNIT 1744	PAPER NUMBER

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/674,103	ZIMMER, JOACHIM	
	<b>Examiner</b>	<b>Art Unit</b>	
	Laura C Cole	1744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 April 2004 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of Claims 1, 8, 13, 16, and 17 use either the term "positive" or "non-positive" to describe a connection. It has not been made clear to the examiner as to what "positive" or "non-positive" is defined as. The Applicant points out in Page 3 of the Specification that a "non-positive" fit includes a press fit, a conically extending axle, and/or a chamfer. What is a "positive" or "non-positive" engagement? From interpreting the written Specification, the Examiner initially thought that "non-positive" meant "not rotatably fixed" (for example, that the disc was not rotatably fixed to the axle), however if "non-positive" is to include press fitting and chamfers it is unclear to the Examiner what is meant by "positive" or

Art Unit: 1744

"non-positive". Further, did the Applicant intend in Claim 17 Line 10 to not amend "positive" to be "non-positive" as the other independent claims had been amended?

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5-13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schill et al., USPN 5,884,357 in view of Zimmer, DE 44 28 371.

Schill et al. discloses a four joint wiper arm for a windshield wiper system that comprises a drive lever (Figure 2 (4)) connected to and fixed against relative rotation to a drive shaft (Figure 2 (7)), a steering lever (Figure 2 (5)) connected to an axle (Figure 2 (11)) which is pivotally connected to a wiper lever (Figure 2 (6)) that is braced in the mounting direction (see arrangement direction in Figure 4). Schill et al. does not disclose specific pivotal connections such as one having levers braced in the mounting direction on a bearing shoulders.

Zimmer displays a connection between a shaft (or axle) (Figure 1 (10)) and a wiper "lever" (Figure 1 (14)) wherein the lever is braced in the mounting direction on a bearing shoulder (Figure 2 (26)) via a disk (Figure 2 (12)), and the disk is pressed by non-positive engagement onto the axle (in that the inner edges

Art Unit: 1744

of the disk serve as "chamfers"), and the axle joined in the pivoting direction to the disk (see Figures). The axle is joined solidly to the disk in the pivoting direction (see screw thread (Figure 2 (24) direction) in a clearance fit (clearance gaps evident in Figure 3). The lever positively surrounds the disk and has circumferential "side walls" (Figure 2 (34) is a side wall and Figure 3 displays the lever surrounding the disk. It appears from Figure 2 that the "side walls" are merging in the mounting direction (upwards) from a smaller cross sectional region to a larger cross sectional region. The axle has a region (Figure 2 (22) wherein the cross section deviates from radial symmetry. Further, Zimmer displays an axle that has a cross sectional region deviating from radial symmetry (Figure 2 (22)) and a pressure piece (Figure 2 (28)) placed between the axle and lever (Figure 3) that has an opening (Figure 2 (30)) that suits the cross sectional region and positively surrounds the axle (Figure 3) and has an outer cone (Figure 2 (34) is cone shaped) pressed within in it an inner cone (Figure 2 (28) and is fixed axially on the bearing shoulder (Figure 3.) The axle and pressure piece appear to be connected positively via from six load-bearing faces (Figure 2).

It would have been obvious for one of ordinary skill in the art to use the lever arrangement that Schill et al. teach and substituting the axles and securing connection structures for those that Zimmer teaches so that the positioning of levers to the axles is not affected by manufacturing tolerances and so that the connection is capable of transferring high torque independent of the tightness of the nut.

4. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schill et al., USPN 5,884,357 in view of Zimmer, DE 44 28 371.

Zimmer further discloses that the lever around the connection point to the axle has an indentation (Figure 2, dashed lines.) However, neither Zimmer nor Schill et al. disclose that the lever is a sheet metal part. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use sheet metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

#### ***Applicants Arguments***

5. In the request for continued examination filed 19 April 2004, the Applicant contends that:

A. Schill nor Zimmer include a "non-positive engagement."

#### ***Response to Arguments***

6. Applicant's arguments filed 19 April 2004 have been fully considered but they are not persuasive.

A. See above rejections. The disk and axle of Zimmer are in an engagement with the axle and as far as the term "non-positive engagement" is defined, the disk and axle are in a non-positive engagement in that the chamfers provide a means of engaging.

The Examiner notes the translator's error with the original Claim 3.

Art Unit: 1744

**Conclusion**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCC  
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12 May 2004



MARK SPISICH  
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